

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KATHYN THYNE, individually and on
behalf of all others similarly situated,

Plaintiff,

CIVIL ACTION FILE
NO. ____

v.

NEAR DIRECT,

Defendant.

NOTICE OF REMOVAL

Defendant Targeted Metrics, LLC (improperly named as “Near Direct”) (“Defendant”), under U.S.C. §§ 1331 and 1441, gives notice of removal for Case Number 1811-CC00155, filed in the Missouri Circuit Court for the Eleventh Judicial Circuit, County of St. Charles, Missouri, to the United States District Court for the Eastern District of Missouri, Eastern Division. In support of this Notice of Removal, Defendant states:

State Court Action

1. Plaintiff Kathryn Thyne filed her Petition in Missouri state court on February 13, 2018. That state court action is Case Number 1811-CC00155, styled *Kathryn Thyne, individually, and on behalf of all others similarly situated v. Near Direct*, currently pending in the State Court of St. Charles County, Missouri (“State Court Action”).

Procedural Requirements and Supporting Exhibits

2. Defendant received service of process at its Kansas City, Missouri location on March 28, 2018. *See* Returns of Service, included within Ex. B. The Petition erroneously named “Near Direct” as the sole defendant (“Near Direct” is a product, not Defendant’s name).¹

3. Defendant hereby removes the State Court Action within 30 days of service. Therefore, removal is timely. 28 U.S.C. §1446 (b)(1); *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (holding that the 30-day deadline to remove begins on the date the summons or citation is served even if the complaint is received at a prior date); *City of Clarksdale v. Bell-South Telecomms., Inc.*, 428 F.3d 206, 210 (5th Cir. 2005) (only formal service of process triggers the 30-day removal period).

4. The State Court Action is pending within this district and division. Therefore, removal to this Court is proper. 28 U.S.C. § 1446(a).

5. In accordance with 28 U.S.C. § 1446(a), the following documents are attached to this Notice:

Exhibit		Description
A		State Court Docket Sheet
B		All pleadings that assert causes of action, all answers, and all process and orders from the State Court
	1	Plaintiff’s Class Action Petition
	2	Summons in a Civil Case to Near Direct
	3	Plaintiff’s Motion for Extension of Time to Serve Defendant
	4	Order Granting Plaintiff’s Motion for Extension of Time to Serve Defendant

¹ Defendant plans to work with Plaintiff to resolve this misnomer, presumably resulting in Plaintiff’s filing of an Amended Complaint in this Court.

	5	Return of Summons in a Civil Case
C		Civil Cover Sheet
D		Original Filing Form

6. Defendant is filing a copy of this Notice in the State Court of St. Charles County, Missouri concurrently with filing this Notice in this Court. 28 U.S.C. § 1446(d).

Federal Question Jurisdiction

7. Removal of a state court civil action to federal court is proper where the civil action arises from the Constitution, laws or treaties of the United States. 28 U.S.C. §§ 1331. Plaintiff's Class Action Petition asserts causes of action solely arising from Defendant's alleged violations of the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, *et seq.* Therefore, this Court has original jurisdiction over all of Plaintiff's claims. Because Plaintiff alleges claims that arise under federal statute, this Court has federal question jurisdiction and removal is proper.

8. Removal of this action is proper under 28 U.S.C. § 1441 because this is a civil action brought in state court, and this federal district court has original jurisdiction over the subject matter under 28 U.S.C. § 1331 because the action involves claims that arise under federal law.

Conclusion

Removal of this action is proper under 28 U.S.C. §§ 1331 and 1441 because the case arises under federal statute conferring original jurisdiction on the federal district court. Accordingly, Defendants remove the State Court Action to the United States District Court for the Eastern District of Missouri, Eastern Division, so that this Court may assume jurisdiction over the cause as provided by law.

This 27th day of April, 2018.

SHOOK, HARDY & BACON L.L.P.

/s/ Rebecca J. Schwartz

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COUNSEL FOR DEFENDANT

TARGETED METRICS, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of April, 2018, I filed the foregoing document with the clerk of the court using the court's CM/ECF system, which will serve electronic notice upon all parties of interest.

/s/ Rebecca J. Schwartz
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LLC

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